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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314
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	)	
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OPPOSITION OF PCS ACTION, INC. TO PETITIONS FOR RECONSIDERATION

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SUMMARY

PCS Action consistently has held that the Federal Communications Commission must issue PCS licenses of 40 MHz if PCS is to be implemented expeditiously and reach its full potential as a large-scale voice and data service available to a mass market. For the same reasons, PCS Action has further advocated that PCS licensing should be implemented in large areas. PCS Action also has argued that, to encourage new competition in mobile telecommunications, the Commission should place a reasonable restriction on the eligibility of cellular telephone companies for new PCS licenses.

The Commission, in its PCS Second Report and Order, established 30 MHz MTA licenses in the lower band and limited in-region cellular restrictions and recognized that, in at least some markets, 40 MHz may be necessary to deploy PCS. Several parties, largely reiterating their arguments presented during the notice and comment period, request on reconsideration that the Commission either modify or wholly abandon these decisions. PCS Action opposes those petitions because the proposed changes would undermine the Commission's four PCS regulatory objectives of universality, speed of deployment, diversity of services, and competitive delivery.

PCS Action supports the Commission's decision to provide PCS spectrum blocks that are larger than 20 MHz and its decision to offer MTA licenses. These decisions represent a commitment to the rapid deployment of affordable PCS in this country. With large spectrum and geographic license blocks, independent PCS operators have an opportunity to offer services in large markets that are competitive from the start with the existing mobile communications service industry. Because PCS Action has always advocated a large vision for PCS, it opposes those petitions of existing mobile communications providers that propose a further fragmentation of PCS through 20 MHz or less of spectrum for all licenses and smaller license service areas than MTAs. A change in the Commission's rules toward a complete fragmentation of PCS would have drastic consequences. PCS operators in the lower band that have no other existing mobile service spectrum, blocked by microwave incumbents, would be unable to use any of their

licensed spectrum, causing years of delay in the deployment of PCS. The cost of moving incumbents before any service can be provided and the costs incurred in the so-called "aftermarket" would substantially raise the price that the public would be forced to pay for PCS. In contrast, large spectrum and geographic license blocks offer the technical and economic base that PCS will need in the near future to provide advanced services such as wireless video and high-speed data communications.

PCS Action also supports the concept of limited in-region cellular restrictions. Cellular companies will enter the PCS market with 25 MHz of cleared spectrum, as well as operations and equipment in place. Therefore, restrictions are necessary to ensure a level playing field for new PCS entrants. Furthermore, the restrictions are reasonable -- they effectively address the anti-competitive concerns while allowing cellular companies to bid for 10 MHz within their CGSA. Thus, the rules do not preclude any cellular interest from participation in PCS or the newly-designated PCS spectrum.

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I. INTRODUCTION

PCS Action, Inc. ("PCS Action")[1] hereby opposes the petitions for reconsideration submitted in this proceeding by members of the existing mobile communications service industry seeking rule changes that would generally limit the ability of new entrants to obtain spectrum for PCS services, and to deploy PCS quickly and effectively. PCS Action urges the Commission to reject changes to the key elements of its PCS Second Report and Order. We continue to believe, as set forth in PCS Action's Petition for Reconsideration and Clarification, that the Commission should adopt such rules as are necessary to permit the aggregation of 40 MHz licenses within the 1850 to 1970 MHz band.

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1 The manufacturing members of PCS Action (i.e., Motorola, Inc., Northern Telecom, and QUALCOMM, Inc.) do not join in this opposition. A list of PCS Action's members is attached hereto.

A. The PCS Second Report and Order

Incumbent mobile service providers, faced with the advent of competition in the form of PCS, are seeking to change key elements of the Commission's Second Report and Order in GEN. Doc. No. 90-314, 58 Fed. Reg. 59174 (Nov. 8, 1993) ("PCS Second Report and Order").

In the PCS Second Report and Order, the Commission sought to optimize and balance four objectives in the PCS rulemaking: universality, speed of deployment, diversity of services, and competitive delivery. Thus, the PCS Second Report and Order allocates 120 MHz for licensed PCS, divided in license areas between the Major Trading Areas (MTAs) and the Basic Trading Areas (BTAs) defined in the Rand McNally Atlas. The spectrum for licensed PCS is channelized into seven blocks -- two 30 MHz blocks licensed by MTAs, one 20 MHz block licensed by BTAs, and four 10 MHz blocks licensed by BTAs. The Commission recognized that 40 MHz may be needed in some markets and sought to accomodate this need by permitting aggregation of up to 40 MHz for most licensees.

The PCS Second Report and Order also provides that where PCS and cellular service areas overlap by 10 percent or more of the population, cellular operators are eligible to bid on only a 10 MHz BTA license. Additionally, ownership interests of 20% or more in a cellular licensee are attributable and thus trigger application of the 10% overlap rule. Thus, the Commission's rules limit dominant cellular operators to 35 MHz of spectrum in PCS service areas encompassing their cellular areas: 25 MHz of cellular spectrum and 10 MHz of PCS spectrum.

B. The Goal of The Petitioners

Only firms impacted by the advent of competition by PCS have challenged the key elements of the Commission's PCS Second Report and Order. Today, nine cellular companies control 90 percent of cellular subscribers in the United States in large regional areas with license allocations of 25 MHz of clear spectrum. An independent, effective PCS industry challenges their current position with increased competition. Nextel is also an existing wireless provider

with its SMR and ESMR service throughout the country. PCS will also competitively challenge Nextel.

Existing mobile service providers would like to obtain additional spectrum for themselves. The impact of their petitions, if granted, would provide them a very large share of the PCS spectrum or, alternatively, delay the deployment of PCS by new entrants. Thus, they advocate (1) separating all the spectrum into small blocks, which will delay deployment; (2) limiting all the geographic markets, which will increase costs and cause additional delays; and (3) relaxing eligibility restrictions for cellular firms and consortia. Their proposals would limit the viability of an independent, competitive PCS industry and undermine the four objectives that the Commission sought to optimize in its rulemaking.

II. THE COMMISSION SHOULD MAINTAIN LARGE SPECTRUM AND GEOGRAPHIC LICENSE BLOCKS FOR PCS

A. The Commission Should Not Reduce the Allocations for Blocks A and B

PCS Action, while continuing to believe 40 MHz licenses are necessary for the rapid deployment of PCS, urges the Commission to maintain current allocations to blocks A and B in the 1850-1970 MHz band. The Commission correctly reasoned that allocations larger than 20 MHz and up to 40 MHz in the lower band[2] will most efficiently accomplish its three goals of: (1) rapid deployment of services; (2) opportunity to provide a full range of services through the use of different sized frequency blocks; and (3) successful spectrum-sharing between PCS licensees and microwave incumbents.[3]

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2 As PCS Action noted in its Petition for Reconsideration , the Commission's dual band aggregation rules present nearly insurmountable obstacles, rendering the ability to create 40 MHz licenses hypothetical rather than real. Thus, PCS Action has petitioned the Commission to permit lower band PCS licensees seeking to aggregate 40 MHz to lease or otherwise obtain portions of spectrum from other lower band PCS licensees.

3 PCS Second Report and Order at ¶ 58.

PCS Action opposes the petitions of incumbent mobile service providers that urge the Commission to provide only 20 MHz and 10 MHz blocks.[4] The vision of these petitioners could result in a complete fragmentation of the PCS spectrum, which would inhibit the growth of an independent PCS industry.

What ultimately is at stake here is whether PCS will develop first as a wireless competitor and eventually provide not only wireless voice, but also data, imaging, multi-media, and video services. The use of 40 MHz licenses as proposed by PCS Action, represent the best hope to realize the latter vision of PCS for three reasons.

First, the allocation scheme supported by PCS Action gives many PCS operators the necessary flexibility to focus on rapid implementation of service to the public. Rapid deployment will mean two direct benefits for the public: (1) head-to-head competition with the existing mobile service industry will save billions of dollars by reducing the price of wireless telephone service;[5] and (2) the influx of revenue that will result from rapid deployment will allow PCS operators to finance the costs of more advanced PCS services. An allocation of 20 MHz or less would significantly decrease the likelihood that PCS licensees will have from the beginning at least some usable spectrum despite the presence of incumbent microwave users. With that spectrum, and using recently developed sharing techniques to work around incumbent microwave users, operators can begin the evolution toward advanced PCS services.

An allocation scheme with only 20 MHz licenses will cripple the deployment of PCS. With only 20 MHz spectrum blocks, a single incumbent microwave user can deny all

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4 PCS Action opposes the petitions of the following parties, which proposed eliminating the 30 MHz allocations: CTIA; Bell Atlantic; BellSouth; Nextel; Florida Cellular; Telephone and Data Systems; Point Communications; George E. Murray.

5 See Letter from Alfred C. Sikes, Chairman, FCC, to President George Bush, April 28, 1992, at 14 (PCS competition with cellular will save the American public $2 to $5 billion per year).

access to spectrum in an important market segment within a licensee's service area.[6] Therefore, 20 MHz PCS operators physically cannot work around an incumbent and cannot rapidly develop PCS service.[7]

Second, the ability to begin serving the public soon after the licensing process will give PCS operators more leverage to negotiate with microwave incumbents. A 20 MHz or less PCS license will prohibit any simultaneous operation with incumbent microwave operators. A PCS operator should be able to deploy a cellular-competitive service and then negotiate with incumbent microwave operators on a more level, reasonable basis. By avoiding exorbitant relocation costs that would result from a small allocation, a PCS licensee will be able to expand the range and lower the cost of services available to the public.

Third, any allocation scheme based solely on blocks of 20 MHz or less imposes a significant risk that the vision for advanced PCS will never be realized. Without sufficient

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6 Microwave licensees in the lower PCS band use two 10 MHz channels -- a total of 20 MHz. See generally "White Paper on PCS Spectrum Issues," PCS Action, Inc. (filed July 21, 1993).

7 The much debated issue of how much of a problem is incumbent relocation underscores at least two indisputable facts: commercial incumbents have at least three years to move and public safety operators can remain at their 2 GHz frequency indefinitely. In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Third Report and Order and Memorandum Opinion and Order, 58 FR 46547, ET Doc. No. 92-9, ¶¶ 2 and 3 (1993).

When these facts are coupled with past experience, it is evident that microwave incumbency will remain a problem for PCS operators well into the year 2000. The process for relocating microwave incumbents will require negotiation between multiple parties, coordination and planning by engineers, and approval by the FCC. The process of performing the frequency coordination, engineering, licensing, and installation today often takes 18 months for a single link. If the Commission adopts the petitioners' 20 MHz allocation scheme, there will be inordinate delay because thousands of links will be relocated in the same time frame. There simply are not enough qualified engineers in this country to make such a simultaneous relocation -- or anything remotely close to simultaneous -- possible. See generally "Refutation of CTIA's Spectrum-Related White Papers," PCS Action, at 4-5 (filed Sept. 8, 1993).

spectrum, a non-cellular (or non-ESMR) PCS operator, after paying the auction price, will be forced to negotiate with microwave incumbents for years without generating a single dollar in revenues.[8] Only the deepest pockets (e.g., RBOCs) could survive in such an environment. In contrast, cellular interests, for example, will not face the same roadblock because their cleared 25 MHz may be readily used to support PCS. Thus, without the Commission's continued commitment to a competitive playing field from the start, PCS operators will not be able to effectively compete with existing mobile service providers.

Further, as recognized by the Commission, large blocks of PCS spectrum can deliver more than just high quality wireless telephone services. It promises "the fullest range of services."[9] As PCS Action has explained in this proceeding, studies of the U.S. demand for PCS and the lessons of the early failure of PCS in the U.K. confirm that:

> PCS services will evolve from secure, high-quality voice and text transmission with national roaming, to fixed and mobile ISDN data, telemetry, broadband data, advanced intelligent network services, and multimedia.[10]

This vision of a full range of service was one of the motivating factors that led NTIA to propose an allocation greater than 20 MHz:

> larger allocations would enable PCS licensees to offer alternative services to consumers, such as larger bandwidth data or imaging services, more quickly and more cheaply than would be the case with smaller allocations.[11]

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8 A 20 MHz plan would result in extensive disruption, requiring relocation of approximately 50 percent of the 10,000 existing microwave links, including 100 percent of the public safety links, within three years of licensing just to initiate service. See COMSEARCH, "Spectrum Allocations and Their Impact on Microwave User Relocations: A Case Study," at § 5.0 (April 12, 1993).

9 PCS Second Report and Order at ¶ 58.

10 "White Paper on PCS Spectrum Issues," PCS Action, Inc. (filed July 21, 1993).

If the Commission were to reduce its allocations to Blocks A and B, it would risk the future of advanced PCS services in the U.S.

Petitioners favoring elimination of even 30 MHz allocations raise the same arguments that were considered in the comment period and that, to some degree, persuaded the Commission to allocate one-half of the licensed spectrum into 10 and 20 MHz blocks.[12] These petitioners now seek to impose their vision of PCS on the entire licensed spectrum.

The Cellular Telecommunications Industry Association ("CTIA"), for example, argues that 30 MHz allocations are inappropriate because 20 and 10 MHz allocations will provide better modular building-blocks in the aftermarket.[13] The "building blocks" approach places far too much faith in the aftermarket.[14] Licensees with 20 or 10 MHz of PCS spectrum but with no other existing mobile service spectrum may not be able to survive the aftermarket. They would have no operating revenues from PCS as they try to negotiate band-clearing, and CTIA's approach would only add to up-front costs by forcing transaction costs on these licensees

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11 Letter to the Honorable James H. Quello, Acting Chairman, Federal Communications Commission from Larry Irving, Assistant Secretary for Communications and Information, United States Department of Commerce, dated September 14, 1993 at 3 ("NTIA Letter").

12 See PCS Second Report and Order at ¶ 57.

13 Petition For Reconsideration of the CTIA, GEN. Doc. No. 90-314, at 7 ("CTIA Petition"). See also Petition for Reconsideration of George E. Murray, GEN. Doc. No. 90-314, at 4; Petition for Reconsideration of BellSouth, GEN. Doc. No. 90-314, at 19.

14 In addition, a large aftermarket, in which licenses recently allocated through the Commission's auction are then bought and sold in a "private auction," is contrary to the intent of the competitive bidding legislation to recover for the public the value of the allocated public spectrum. See 47 U.S.C. § 309(j)(3)(C); see also H.R. Rep. No. 103-11, 103rd Cong. 1st Sess. at 253 (1993) (House finds "that if licensees are engaged in reselling the use of public airwaves to subscribers for a fee, the licensee should pay reasonable compensation to the public for those resources").

as they try to negotiate for more spectrum. Incumbent mobile service providers would be the only players with any cleared spectrum to leverage wireless revenues against the prices and transactions costs in the PCS aftermarket. However, these aftermarket transaction costs are avoided from the start by allocating large spectrum blocks.

Given that the aftermarket is likely to be dominated by the entrenched mobile service providers, the 30 MHz allocation together with the real as opposed to hypothetical ability to create 40 MHz licenses furnishes non-cellular and non-ESMR PCS operators the minimum amount of spectrum necessary to compete on a regional basis with incumbent service providers, which are likely to obtain as much spectrum as the Commission's rules permit.

In addition, these petitioners argue that the Commission's allocation scheme allows Block A and B licensees to dominate PCS and destroys the competitive level playing field.[15] This argument, like the previous one, is based on a very limited vision for PCS. It assumes that these licenses will be used to provide the same services as 10 MHz licenses. In contrast, the Commission's entire allocation scheme is based on the fact that a Block A or B allocation will provide the ability to offer different services than a 10 MHz licensee.[16] Further, in the interest of spectrum efficiency, it makes no sense to license only 20 MHz blocks, as Bell Atlantic and Telephone and Data Systems propose, when some services will require 10 MHz and other services will require 30 MHz or more.[17] Alternatively, the ability to operate the 40 MHz

15 Petition for Reconsideration of Florida Cellular RSA Limited Partnership, GEN. Doc. No. 90-314, at 3-4 ("Florida Cellular Petition"); George Murray Petition at 6; Petition for Reconsideration of Bell Atlantic Personal Communications, Inc. GEN. Doc. No. 90-314, at 11 ("Bell Atlantic Petition"). Further, in-region cellular operators, with 25 MHz of cleared spectrum for voice services and an additional 10 MHz for more advanced PCS services, suffer no competitive disadvantage when compared to the PCS operator that has 30 or 40 MHz of uncleared spectrum to provide both voice and advanced services.

16 See PCS Second Report and Order at ¶¶ 56 to 58.

17 Bell Atlantic Petition at 10; Petition for Reconsideration of Telephone and Data Systems, Inc., GEN. Doc. No. 90-314, at n.2 ("TDS Petition").

licenses proposed by PCS Action provides the efficiencies needed to prevent the PCS industry from failing even before it gets started. Remarkably, Bell Atlantic's economic analysis supports allocations of large spectrum blocks even though Bell Atlantic wants to eliminate the 30 MHz blocks.[18]

Lastly, there is ample record support for the Commission's allocations in Blocks A and B. Of the 66 petitions for reconsideration filed, only seven favored reducing the 30 MHz allocations. Given that over 150 parties submitted comments or reply comments in this proceeding, the fact that only seven have come forward with objections to 30 MHz indicates widespread acceptance of the current Block A and B allocations. The Commission itself noted that at least 21 parties specifically endorsed 30 MHz allocation in the comments and reply comments.[19] Those that oppose licenses of less than 30 MHz include not only industry leaders like the members of PCS Action, Adelphia Communications, Sprint, and the Communications Satellite Corp., but also leading government agencies like the NTIA and the California Public Utilities Commission. Support for large blocks of spectrum for PCS is so resounding because they mean faster deployment of PCS, more effective competition with existing mobile service providers, and more advanced PCS services in the near future.

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18 Bell Atlantic Petition at 10 n.2 (acknowledging that a 30 MHz license has greater operating efficiencies than either a 20 MHz license or 10 MHz license).

19 PCS Second Report and Order at n.37.

B. The Commission Should Maintain MTA License Areas For PCS

PCS Action supports the Commission's decision to use MTAs for wide-area licensing of PCS.[20]

Various petitioners urge the Commission to license broadband PCS using only BTA license areas.[21] PCS Action opposes these petitions and urges the Commission to retain MTA-based license areas.

The Commission correctly concluded that using MTAs for wide-area licensing was likely to "provide the economies of scale and scope necessary for the development of low cost PCS equipment," "promote roaming within large geographic areas," and "facilitate interoperability with other PCS systems." PCS Second Report and Order at ¶ 75. With fewer licensing decisions necessary than an all-BTA scheme (or the MSA/RSA scheme originally proposed by some of the petitioners), wide-area licensing would also promote the rapid deployment of PCS. Id. at ¶ 73. The Commission also concluded that wide-area licensing would promote ubiquitous coverage of PCS, id., reduce the costs of interference coordination between PCS licensees, simplify the coordination of technical standards, and facilitate the relocation of microwave incumbents in the PCS bands. Id. at ¶ 74. Finally, using wide-area licensing based

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20 The Commission's rules establish two license areas: Major Trading Areas (MTAs) and Basic Trading Areas (BTAs). MTAs consist of the 47 MTAs designated in the Rand McNally Atlas, as well as a separate MTA for each of the following areas: Alaska; Guam and the Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; American Samoa. BTAs consist of the 487 BTAs designated in the Rand McNally Atlas, as well as a separate BTA for each of the following areas: American Samoa; Guam; the Northern Mariana Islands; Puerto Rico; the U.S. Virgin Islands.

21 The following petitioners propose that the Commission use only BTAs as the service areas for PCS licensing: CTIA; Nextel; Bell Atlantic; BellSouth; TDS; George Murray. Further, the following petitioners propose that the Commission abandon the use of MTAs as service areas for PCS licensing: Killen & Associates; Utilities Telecommunications Council.

on the natural flow of commerce would allow PCS licensees to tailor their systems to the natural geographic dimensions of PCS markets. Id.

The Commission further concluded that combining MTAs and BTAs in its licensing of PCS would ensure a diversity of services and entrepreneurs. Id. at ¶ 77.

NTIA, for example, has correctly concluded that a BTA-only licensing scheme could delay the deployment of PCS services because of the need to (1) auction thousands of PCS licenses, (2) have parties "engage in a lengthy process to aggregate very small license areas into large areas, as was frequently done in the cellular service," and (3) then have them coordinate interference among nearly 500 geographic areas.[22] All of this would increase the costs of PCS service providers and the costs to consumers.

NTIA's position also reflects that a serious question exists whether most of the BTAs have sufficient population to support a PCS business. Most of the 487 Rand McNally BTAs have a small population. The population of the median BTA is only 190,000. Based on FCC staff projections, a market this size is likely to produce only about 20,000 mobile radio subscribers over the next ten years.[23] Assuming equal market shares among six competitors (two cellular licensees, an ESMR licensee, two 30 MHz MTA PCS licensees, and one 20 MHz BTA PCS licensee), the 20 MHz BTA licensee would have less than 4,000 subscribers after ten years. This is likely to be too small to be economically viable.

Given CTIA's support of BTAs, it is interesting to note that only one day after the Commission announced its PCS Second Report and Order, seven of CTIA's nine major members pointed to the Commission's PCS decision as evidence that the U.S. Justice Department should

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22 See NTIA Letter at 5.

23 "Changing Channels: Voluntary Reallocation of UHF Television Spectrum," OPP Working Paper 27, by Evan Kwerel and John Williams (FCC, November 1992), assumes that total cellular radio penetration will grow by one percentage point per year. Id. at p. 40.

abandon the 194 LATAs for "new 'exchange areas' for wireless services based on MTAs."[24] In their submission, the RBOCs lumped PCS and cellular services together as part of the "wireless industry" in arguing that LATAs are "too small when imposed on wireless services;" that "cellular companies have already established service area 'clusters' across the country," which "generally fall neatly within MTAs;" and that 31 of the 37 interLATA waivers obtained by BOC cellular affiliates have fallen within single MTAs.[25]

Nevertheless, despite rejecting 194 "exchange areas" for wireless services as "too small," the cellular affiliates of many of these same RBOCs would have the Commission believe that the far more numerous 492 BTAs are superior to 47 MTAs for licensing PCS.

Ironically, CTIA's own economist undercuts its argument that the Commission should rely exclusively on BTAs as the service areas for PCS licenses. He concludes that the scope of the geographic market for mobile telecommunications services, while it "need not encompass an entire MTA; it would . . . likely encompass a substantial portion of the MTA, an area substantially larger than the average BTA."[26]

Finally, it should be noted that, apart from the petitions filed by some existing mobile service providers, no petitioners requested that the Commission rely exclusively on BTAs as the service areas for PCS licenses.

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24 Letter of Michael Kellog of Kellog, Huber & Hansen, to Richard L. Rosen, Chief, Communications & Finance Section, U.S. Department of Justice's Antitrust Division, dated September 24, 1993, submitting a "Revised Proposed Order for Generic Mobile Relief," at 10.

25 Id. at 5-10.

26 Besen & Burnett, "An Antitrust Analysis of the Market for Mobile Telecommunications Services," at 27 (attached to CTIA's Petition as Appendix A).

III. THE COMMISSION SHOULD MAINTAIN IN-REGION CELLULAR ELIGIBILITY RULES

In the PCS Second Report and Order, at ¶¶ 106-107, the Commission limited to only one 10 MHz BTA license certain PCS applicants already providing wireless services to the PCS license area. Several of the major cellular carriers,[27] the CTIA, and others have petitioned the Commission to reconsider the 10 MHz limit on certain in-region cellular incumbents. PCS Action opposes these petitions.[28] Alternatively, CTIA, Nextel, and others have petitioned the Commission to abandon or gut its overlap and/or attribution rules. PCS Action opposes these petitions, too.[29]

A. The Commission Should Retain Its 10 MHz BTA Limit For Certain In-Region Cellular Providers

The Commission's adoption of a 10 MHz PCS spectrum limit on certain in-region cellular carriers reflects its recognition that the wireless market is far from being perfectly competitive. Ninety percent of today's cellular market, for example, is dominated by nine cellular providers nationwide: affiliates of the seven Regional Bell Operating Companies, AT&T/McCaw, and GTE/Contel, with each local cellular market subject to a duopoly. Without any eligibility restrictions for dominant in-region cellular carriers, the largest cellular carriers will continue to dominate the wireless spectrum.

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27 Among the major cellular providers (or their affiliates) that did not petition the Commission to reconsider its eligibility rules are Ameritech, Southwestern Bell, and U.S. West.

28 These petitioners are Bell Atlantic, BellSouth, CTIA, McCaw, Personal Network Services, Radiofone, and Telephone and Data Systems, Inc.

29 These petitioners are CTIA, Florida Cellular, GTE, McCaw, Nextel, Radiofone, Sprint, and Telephone and Data Systems, Inc.

Incumbent mobile service providers themselves have no incentives to fully develop wireless services that compete in markets with the services they already provide. By comparison, new entrants -- with no existing wireless customer base to protect -- are more likely to innovate, bring competition to voice services, and deploy new data and imaging services sooner.

Also, as noted by MCI in its Petition for Partial Reconsideration and Clarification,[30] incumbent cellular providers have a substantial competitive advantage because they have a much lower financial "hurdle rate" in bidding for PCS licenses than new entrants. Furthermore, they already have cell sites, antenna locations, and channels of distribution in place should they wish to compete against other PCS providers. The potent combination of incentive to eliminate new competition and the wherewithal to outbid new entrants is virtually certain to result in less competition and undue cellular control of the PCS industry.

Thus, the vast majority of non-cellular commenters, as well as governmental bodies, urged the Commission to limit cellular firms from bidding for large PCS spectrum blocks in their service areas.[31] NTIA, for example, initially urged the Commission to prohibit outright the acquisition of PCS licenses by cellular providers in their own service areas.[32] Relaxing its

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30 MCI Petition for Partial Reconsideration and Clarification, GEN. Doc. No. 90-314, at 3 ("MCI Petition").

31 Indeed, several commenters, including the California Public Utilities Commission, argued that cellular providers should be excluded from obtaining PCS licenses anywhere in the U.S. See PCS Second Report and Order at ¶ 99. MCI has also petitioned the Commission to exclude the nine largest cellular carriers from eligibility to bid on licenses in one of the 30 MHz MTA blocks nationwide. See MCI Petition at 2.

32 Comments of the National Telecommunications and Information Administration at 27, FCC GEN. Doc. No. 90-314 & ET Doc. No. 92-100 (Nov. 9, 1992); see also Comments of the U.S. Department of Justice, FCC GEN. Doc. No. 90-314 & ET Doc. No. 92-100 at 29-30 (Nov. 9, 1992); and U.S. General Accounting Office, "Telecommunications: Concerns About Competition in the Cellular Telephone Service Industry" at 42 (GAO/RCED-92-l220 July 1992).

position, NTIA later argued that incumbent cellular providers should be "barred" from bidding for the largest PCS spectrum blocks within their current service areas but permitted to compete for single, small PCS spectrum blocks in their service areas.[33]

The Commission's limited cellular eligibility restriction is consistent with the views of non-cellular parties, including governmental policy makers; maximizes the potential for competition against incumbent cellular providers, thereby maximizing consumer welfare; and should be retained.[34]

B. CTIA's Proposed Attribution Rules Will Result In The Dominant Cellular Incumbents Capturing All Of The Large Spectrum Blocks

The Commission has long recognized that its attribution rules are critical to the effectiveness of any eligibility restriction. In its NPRM, the Commission proposed to ban from bidding for PCS licenses any applicant with interests of 1% or more (or 5% or more for publicly traded corporations) in a cellular license serving the same geographic area as the PCS license. See PCS Second Report and Order ¶ 97. In the PCS Second Report and Order, the Commission abandoned this approach and ruled instead that PCS applicants holding interests of 20% or more in cellular licensees covering 10% or more of the PCS license area's population will be able to bid for PCS spectrum in their region but hold only one 10 MHz BTA license.

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33 NTIA Letter at 4.

34 Under the guise of clarifying the implications of the 40 MHz aggregation limit, CTIA also seeks to have the Commission increase the 10 MHz limit for cellular to 15 MHz. See CTIA Petition at 12 n. 31. Given that existing cellular providers enjoy the advantage of building upon 25 MHz of clear spectrum, the Commission should reject any efforts to increase the 10 MHz limit for cellular.

CTIA proposes that the Commission further relax its rules by limiting cellular eligibility to only those PCS applicants holding interests of 35% or more in cellular licensees covering 40% or more of the PCS license area.[35] PCS Action opposes CTIA's proposal.[36]

To achieve competition in wireless services, the Commission must not only design an auction system that prevents individual dominant cellular carriers from eliminating potential competitors. It must design a system that also prevents these carriers from achieving the same goals by operating in consortia. The existing cellular carriers already are cooperating extensively as reflected, for example, by the efforts in 1993 of McCaw, GTE, and affiliates of five of the seven RBOCs to conduct joint R&D.[37]

The arguments that incumbent cellular providers have both the incentive to eliminate new competition and the wherewithal to outbid new entrants apply with at least equal force to a consortium of several of the dominant cellular carriers.

Under the CTIA proposal, NYNEX's cellular affiliate, for example, could hold a 30 MHz PCS license for the New York MTA provided it did so in a consortium in which it held less than a 35% interest. Its consortium partners could be, for example, the cellular affiliates of only Bell Atlantic and BellSouth. Indeed, such a consortium could hold PCS licenses for MTAs throughout the operating areas of these RBOCs -- that is, the entire East Coast and Southeast. Through cross-operating agreements, the consortium could let each RBOC member operate the

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35 It appears from CTIA's discussion of 55 MHz of spectrum for cellular, see CTIA Petition at 15, that it also is seeking elimination of the 5% attribution rule, which triggers the 40 MHz spectrum aggregation limit, at least as applied to cellular interests.

36 For the reasons stated herein, PCS Action also opposes other proposals to either radically modify or abandon altogether the Commission's attribution rules. See Petitions for Reconsideration or Clarification of the following parties: McCaw Cellular Communications, Inc.; Radiofone, Inc.; Telephone and Data Systems, Inc.

37 See "GTE Mobile, Six Other Firms Plan Wireless Data Technology," Telecommunications Reports, May 10, 1993, p. 41.

PCS service in precisely the CGSAs that each holds cellular interests.[38] Thus, CTIA's proposal would permit NYNEX, Bell Atlantic, and Bell South each to operate 55 MHz of spectrum: 25 MHz of cellular spectrum owned by the RBOC and the 30 MHz MTA license owned by the consortium. In addition, each could obtain a 10 MHz BTA license in its core areas. Consequently, under the CTIA scheme, NYNEX could operate 55 MHz of wireless licenses in the New York MTA and a total of 65 MHz of wireless licenses in the New York City BTA.

Outside of their cellular service areas, of course, these three RBOCs (individually or in a consortium) could bid for a 30 MHz MTA license without any eligibility restrictions. A similar consortium of other major cellular providers could seize the remaining MTA blocks throughout the country.

To justify a formula that would permit the largest cellular carriers to end up with all of the largest PCS spectrum blocks, CTIA showcases the adverse effects of the Commission's current PCS attribution rules upon certain mid-sized and "small" cellular companies.[39] CTIA ignores the fact that these "small" companies could participate in consortia or hold their own 10 MHz licenses. Neither the Commission's rules nor the modest proposals of some parties[40] preclude these companies from PCS participation.

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38 The consortium members might need to divest themselves strategically of one or more CGSAs in order to accomplish their regional PCS goals.

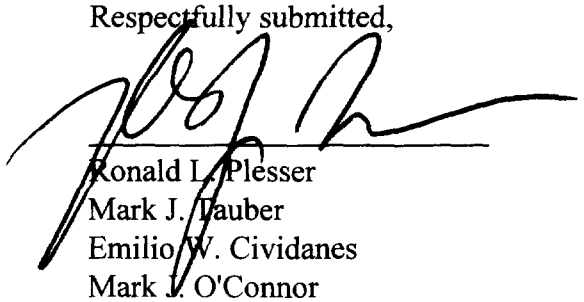
39 See CTIA Petition at 21-22.

40 American Personal Communications, for example, has proposed cellular attribution benchmarks of 20%.

IV. CONCLUSION

For the foregoing reasons, the Commission should decline to adopt the rule changes that would generally constrain the ability of new entrants to obtain spectrum for PCS services, and to deploy PCS quickly and effectively, that is, changes that would undermine the four objectives that the Commission sought to optimize in its rulemaking.

Respectfully submitted,



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January 3, 1994

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Membership Roster

Service Provider Members:

- American Personal Communications/
  The Washington Post Company
- Associated PCN Company
- Cox Enterprises, Inc.
- Crown Media
- Omnipoint Corporation
- Providence Journal Company
- Times Mirror Cable Television, Inc.
- Time Warner Telecommunications

Manufacturing Members:

- Motorola Inc.
- Northern Telecom
- QUALCOMM, Inc.

CERTIFICATE OF SERVICE

I, Mark J. O'Connor, hereby certify that a copy of the attached "Opposition of PCS Action, Inc. to Petitions for Reconsideration" was sent on January 3, 1994 via first class mail, postage prepaid, to the following addressees:

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